

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

ESLAM ELTAWHEEL, OWNER OF AEW
MARKET,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE

Defendant.

C. A. No. 14-409-M

ORDER

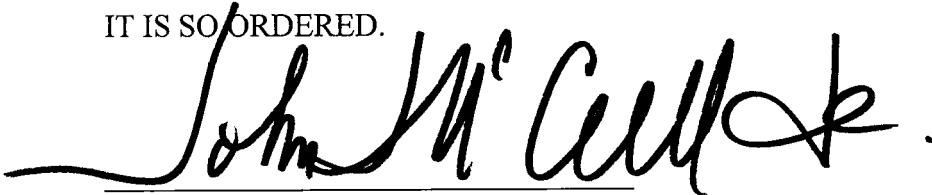
Defendant United States Department of Agriculture (“USDA”) filed a Motion for Summary Judgment, arguing that its decision to disqualify AEW Market from participating in the Supplemental Nutrition Assistance Program (“SNAP”) was soundly supported by the undisputed record and was neither arbitrary nor capricious as a matter of law. (ECF No. 7). AEW Market objected on substantive grounds, but also argued that the USDA’s motion was premature and that it is entitled to discovery on disputed issues of fact before the Court considers a dispositive motion. (ECF No. 13). After a hearing on the merits of the USDA’s motion, AEW filed a motion and affidavit for discovery pursuant to Fed. R. Civ. P. 56(d) (ECF No. 20); the USDA filed an objection. (ECF No. 22).

“[D]istrict courts should construe motions that invoke [Rule 56(d)] generously.” *In Re: PHC, Inc. Shareholder Litigation*, 762 F.3d 138, 143 (1st Cir. 2014). In this case, no discovery has taken place and, “[t]ypically, when the parties have no opportunity for discovery, denying the [Rule 56(d)] motion and ruling on a summary judgment motion is likely to be an abuse of discretion.” *Id.* at 144 (quoting *CenTra, Inc. v. Estrin*, 538 F.3d 402, 420 (6th Cir. 2008)). AEW has set forth the discovery that it wants to conduct in an effort to oppose the USDA’s

motion for summary judgment. While the Court is “skeptical that discovery will produce evidence sufficient to survive a subsequent dispositive motion by [USDA],”¹ the Court believes that AEW should be allowed time to conduct some appropriate discovery to support its claims and defend against the USDA’s summary judgment motion before it decides this matter.

Therefore, the USDA’s Motion for Summary Judgment (ECF No. 7) is DENIED WITHOUT PREJUDICE pursuant to Rule 56(d). Fact and expert discovery in this matter will close January 8, 2016. Dispositive motions are due February 5, 2016. Final pretrial memos shall be due 30 days after the Court rules on the dispositive motion(s).

IT IS SO ORDERED.

A handwritten signature in black ink, reading "John J. McConnell, Jr.", with a stylized flourish at the end.

John J. McConnell, Jr.
United States District Judge

July 7, 2015

¹ *ANS Food Mkt. v. United States*, Civil No. JKB-14-2071, 2015 WL 1880155, at *4 (D. Md. Apr 22, 2015).